

**LEGISLATIVE SERVICES AGENCY
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FISCAL IMPACT STATEMENT

LS 7604

BILL NUMBER: HB 1483

NOTE PREPARED: Feb 13, 2007

BILL AMENDED: Feb 12, 1007

SUBJECT: Common Construction Wage.

FIRST AUTHOR: Rep. Kuzman

FIRST SPONSOR:

BILL STATUS: 2nd Reading - 1st House

FUNDS AFFECTED: X GENERAL
X DEDICATED
X FEDERAL

IMPACT: State & Local

Summary of Legislation: (Amended) *Department of Labor:* This bill empowers the Department of Labor to enforce the common construction wage law through investigation of alleged violations, imposition of certain remedies, and application for judicial remedies. It forbids retaliation against an individual who acts to assist the enforcement of the common construction wage law. The bill authorizes the Department to adopt administrative rules to implement certain enforcement powers.

The bill reduces from three classes to two skill levels the classification of labor to be employed in the performance of a contract for a public work project. It includes journeymen in the skilled labor level. The bill also replaces the classes of semiskilled labor and unskilled labor with the apprentice labor level and defines apprentice.

The bill provides that persons who have certain relationships with a contractor or subcontractor that violates the law may not be awarded public work contracts for certain periods of time. It provides that an agreement in which a worker agrees to work for less than the common construction wage is void.

Penalty Provision: The bill authorizes certain persons to maintain a private action on behalf of a worker to recover damages for the contractor's or subcontractor's failure to pay the worker the common construction wage. The bill provides that violations of the common construction wage law are misdemeanors.

Exceptions: The bill removes from the common construction wage law exceptions under which the law does not apply to: (1) contracts let by the Indiana Department of Transportation for the construction of highways, streets, and bridges; and (2) certain public work done for Purdue University on agricultural or forestry land owned or occupied by Purdue.

The bill repeals a superseded criminal statute.

Effective Date: July 1, 2007.

Explanation of State Expenditures: *Department of Labor:* The Commissioner is required to enforce the common construction wage law and investigate complaints. The Commissioner can seek judicial relief to enjoin:

1. The awarding of a contract that would be awarded in violation of the common construction wage law.
2. The beginning of a public work project that has or would be begun in violation of the common construction wage law.
3. The continuation of a work project that is being performed in violation of the common construction wage law.

The Department of Labor would be able to:

1. Enter and inspect the place of business or employment of the employer.
2. Inspect records that relate to wages, hours, or other conditions of employment.
3. Make copies of records inspected.
4. Question workers to determine compliance.
5. Administer oaths.
6. Take depositions.
7. Require, by subpoena, the attendance of witnesses and the production of records.
8. Require an employer to affirm statements regarding wages, hours, names, addresses, and other information.
9. Require the state or municipal corporation to withhold not more than 25% of the payments to be made that have failed to produce required records.
10. If an employer refuses to produce the required records, the Department shall order the state or municipal corporation to directly pay employees for the amount owed up to 25% of the amount withheld above.
11. Contract with a certified public accountant to audit the employer to determine compliance.

The increase in expenditures would depend on the number of projects investigated.

Background on Department of Labor Staffing and Budget: The Department of Labor on January 8, 2008, had 38 vacant positions valued at \$1,141,008; 15 positions had been vacant for more than two years. The Department reverted \$1,251,018 on June 30, 2006.

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The impact of these changes is expected to vary by project. However, a number of studies suggest that wage determination provisions can increase the labor cost of public works projects from 5% to 16%.

However, other studies argue for prevailing wage-type systems on the grounds that they lead to greater efficiency, quality, and safety by providing for a stable, well-trained labor force. Under this assumption, the bill could save the state in the long run, although the additional savings are unknown.

Unfortunately, data limitations and questionable methodology limit the conclusiveness of many studies on prevailing wage laws.

Secondary Impact: If, as some studies have shown, common wage requirements increase the costs of labor to the state, then higher wages may have the following effects:

- State income tax collections could increase (assuming no decrease in employment levels), increasing consumption, and further increasing sales tax revenue;
- Debt incurred to finance projects could increase due to higher project costs, requiring increased bonding or property taxes; and
- Funds that may have been used for other projects could be available for the public works project. Similarly, capital expenses could be more, making less funding available for noncapital expenses in project budgets.

Explanation of State Revenues: (Revised) *Penalty Provision:* A person , excluding a labor union, that knowingly or intentionally asks for or receives money from an employee on a public works project and implies that the failure of the payment will prevent the employee from working commits a Class A misdemeanor. A person who knowingly or intentionally violates the common construction wage law commits a Class B misdemeanor. If additional court cases occur and fines are collected, revenue to both the Common School Fund (from fines) and the state General Fund (from court fees) would increase. The maximum fine for a Class A misdemeanor is \$5,000 and a Class B misdemeanor is \$1,000. However, any additional revenue would likely be small.

The bill allows a private action on behalf of a worker to recover damages for the contractor's or subcontractor's failure to pay the worker the common construction wage. The person is eligible to recover three times the difference between what the employee was paid and what the employee was eligible to receive under the common construction wage law. If the private action is not done by the employee, then the employee has one year to claim the damages or the money is considered unclaimed property. In addition, the court is to impose a penalty payable to the Department of 20% of the difference in the amount paid and the amount that should have been paid.

Explanation of Local Expenditures: See also *Explanation of State Expenditures*.

Penalty Provision: A Class A misdemeanor is punishable by up to one year in jail and a Class B misdemeanor is punishable by up to 180 days in jail.

Explanation of Local Revenues: *Penalty Provision:* If additional court actions occur and a guilty verdict is entered, local governments would receive revenue from court fees. However, any change in revenue would likely be small.

State Agencies Affected: Department of Labor, All.

Local Agencies Affected: All.

Information Sources:

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